Fiction Writing: A Great Escape--and Possible Ethics Trap--for Lawyers

By Michael L. Seigel

Many lawyers dream of writing the next great American novel. Well, if not the great American novel, at least a murder mystery as successful as those penned by John Grisham, Scott Turow, or Erle Stanley Gardner. Most of us won't reach that level of success, but many will try. Why? While the practice of law is rewarding in many ways, it does not offer much of a creative outlet. Writing fiction is a creative outlet, and it comes naturally to many lawyers. After all, we all have been trained to write, and many of us have experience with exciting cases and courtroom drama. Before you decide to take the plunge and write fiction, you must navigate around ethical pitfalls to ensure that your hobby doesn't turn into a career-ending venture.

Don't plagiarize or fail to fact check. You might start out thinking that your work will never see the light of day, which might lead you to take some shortcuts. Then, the next thing you know, your fiction novel is published for the public to read. You do not want to have your novel raise questions about your integrity and diligence. This could have serious repercussions on your professional standing. Rule 8.4(c) of the ABA Model Rules of Professional Conduct (ABA Model Rules) prohibits conduct "involving dishonesty, fraud, deceit, or misrepresentation." To avoid such ethical entanglements, you should credit sources and fact check from the outset.

Get permission from or at least notify your employer. It is not a good idea to pursue significant non-legal work activity without providing advance notice to your law firm. First, anything you write that is published (whether formally or via the Internet) could impact your reputation and your firm's reputation. If you decide to write a spicy scene or express possible controversial views, it can come back to haunt you. Second, your employer could think that you are sacrificing your legal work for the benefit of your personal project. You should address this issue with your firm and provide assurances upfront.

Establish the extent to which you may use firm resources. You may find yourself using your work e-mail to correspond with editors and publishers, your firm's computers to draft your novel, and your firm's administrative assistants for managing your writing project. If the use of firm resources is minimal, a firm is likely to acquiesce to such use. If it is more significant, the firm may want reimbursement from you. Also, to the extent that you use firm resources to publish your book, your firm may have claim to share proceeds if and when your book is successful. You should have a written understanding with your firm about use of firm resources before pursuing your writing project.

Take care in converting fact to fiction. If you are a typical fledgling author, much of your story line will be pretty close to home. However, using personal sources of inspiration could come at a hefty price. ABA Model Rule 1.8(d) and accompanying Comment [9] prohibit a lawyer from negotiating literary or media rights to any story based "in substantial part" on the representation of a present client. More generally, if you base fictional characters on real, identifiable people and the portrayal is negative, the recipients of such attention may not be happy. If a fictional character is the managing partner of your firm, the outcome could be serious. If a fictional character is a judge, you should study ABA Model Rule 8.2, which prohibits the disparagement of judges and other legal officers.

Writing takes a lot of dedication and becoming published is a grueling process. My mystery novel was rejected by 150 agents before one decided to take it, and then she had trouble finding a traditional publisher. I resorted to an on-demand printing service and marketing through Web sites, such as Amazon.com, which is a growing trend. When you finally see your work in print, the mental liberation and emotional exhilaration make it all worthwhile. Are you ready to write?

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